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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1956.

No. 791

STELLA C. DAVIS and BETTY HORRIGAN,

Appellants,

vs.

ELLIOT W. SEYMOUR,

Appellee,

APPELLANT'S BRIEF OPPOSING APPELLEES MOTION TO DISMISS APPEAL AND ALTERNATIVE MOTION TO AFFIRM JUDGMENT

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The appellants, Stella C. Davis, and Betty Horrigan, Pro Se, moves this Court to dismiss the appellee's Motion To Dismiss Appeal and Alternative Motion to Affirm Judgment and Order of the lower court.

STATEMENT OF FACTS.

The appellant, Stella C. Davis, as plaintiff, on September 12, 1956, filed a civil action for damages in the United States District Court for the Northern District of California, Southern Division, against appellee, Elliot W. Seymour, (Trans. Rec. p. 1-5). On November 1, 1956, appellant, Betty Horrigan filed a petition to intervene in said action as party plaintiff, (Trans. Rec. p. 7), whereas on November 19, 1956, during the Hearing of Motion To Dismiss Action by defendant, Elliot W. Seymour, in the United States District Court, in the City of San Francisco, California, appeared, the appellant, Betty Horrigan, in person and made an Oral Motion to be granted an Order to Intervene therein. This Oral Motion was granted in Court by the Honorable George B. Harris, Judge of said District Court, thereby disputing the statement made by the appellee (Appellees Motion to Dismiss Appeal p. 2) that she failed to secure Order to intervene. In Fed. R. of Civ. P. rule 7, an application to the Court for an Order may be made during Hearing or Trial.

On November 9, 1956, appellants filed Affidavits (trans. Rec. pages 25-28 and 29-32) and on said date filed Exhibits in Support of Plaintiff's Affidavits (trans. Rec. pages 33 through 51). That under U.S.C. 28 sections 1332 and 1331, Diversity of Citizenship and Federal Questions in this cause of action gives the District Court original jurisdiction and since violations of their Constitutional and Civil Rights are asserted due to interstate conspiracy and unlawful searches (appellants jurisdictional statement and brief p. 2-3 "Misconduct & Color of Office" by an attorney, also together with an "Officer of the

United States and Justice Department" is involved in this Conspiracy which refutes the contention of the appellee that said action was barred by the California statutes on limitations of actions Code of Civil Procedure sections 337 (4 years), 338 (3 years) and 339 (2 years).

On December 4, 1956, the appellant, Stella C. Davis served a copy of the Notice of Appeal to The Supreme Court of the United States on appellee by mail and on said date sent the original copy to the clerk of the Court to be filed. The clerk of the U.S. District Court for Northern District of California, Southern Division filed this copy on the 24th day of December, 1956.

On January 11, 1957, the appellants filed a Petition for an Order directing the Clerk of said district Court to send them a certified copy of the Opinion rendered by Honorable George B. Harris, Judge of said District Court and a certified copy of his Order and proceedings held in said Court on November 19, 1956 in the above cause of action, and his approval of their Appeal Bond. The appellant and party appellant also request copies of the praecipe of the entire record in order to enable them to prepare their Petition and Brief for the Supreme Court of the United States (trans. Rec. p. 75), and their Appeal Bond was filed on December 24, 1956. Due to the fact that the appellants were representing themselves and mostly via United States mail, and the certificate of the clerk of the Court was dated January 25, 1957, the appellants had very little time left to prepare their Jurisdictional Statement and Brief to be printed and docketed prior to preparation of the above mentioned documents. The appellants on January 30, 1957, filed in the Supreme Court of the United States Motion For Extension of

Time For Filing Petition and Brief For A Writ of Certiorari or Bill of Review with Affidavit of Service dated January 28, 1957 to Elliot W. Seymour, appellee. On February 11, 1957, the appellants filed a Motion to correction line 11 of page 2 of Motion For An Amended Application for An Extension of Time within Which to File a Petition for Writ of Certiorari to Honorable Earl Warren, Chief Justice of the Supreme Court. The above mentioned proceedings in the Supreme Court of the United States show that the appellants were diligent in their attempts to perfect their appeal to said Court.

Appellants' Brief Opposing Motion To Dismiss Appeal and Alternative Motion to Affirm Judgment.

The appellants contend that the appellee's Motion to Dismiss Appeal that the appeal is not within the jurisdiction of this Court is in error and that Section 1252 U.S.C. 28 which has to do with direct appeals from decisions invalidating acts of Congress, to which a United States officer or employee thereof, is a party. Ray M. Foreman, was an Assistant United States Attorney in Danville, Illinois who is named in an interstate conspiracy with the appellee (appellants jurisdictional statement and brief p. 4-5). The appellee used Federal Communications and United States Mail to carry on this Fraud and Conspiracy upon the appellants. Article 2 sec. 109 of Constitution. Illegal Searches violation of Article IV to Constitution. 28 U.S.C. 1332 (1) violation of Federal Rules of Procedure and Due Process of Law. That there are Federal questions of Substance not theretofore determined by the Supreme Court of the United States in this cause of action involving an "Officer of The U.S. and Justice Department" together with the appellee, Elliot W. Seymour, 28 U.S.C. 507.

Conclusion.

It is respectfully submitted that the Motion To Dismiss Appeal and Alternative Motion to Affirm Judgment by the appellee should be dismissed and since there was a plain and manifest abuse of the discretion of the District Court in granting the appellee's Motion to Dismiss appellant's cause of action in said court the Plaintiffs pray for a reversal of the Order to Dismiss entered in said District Court on November 20, 1956.

Respectfully submitted,

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